

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

OHIO CASUALTY INSURANCE COMPANY, )  
  )  
Plaintiff,                          )  
  )  
v.                                      ) Civil Action No. 3:06-cv-977-MEF  
  )  
MANIFOLD CONSTRUCTION, LLC, et al., )  
  )  
Defendants.                          )

**DEFENDANTS' MOTION TO AMEND ANSWER**

COME NOW the Defendants, Whittelsey Properties, Inc. and C.S. Whittelsey, IV (collectively referred to herein sometimes as "Whittelsey"), and move this Honorable Court to allow Whittelsey to amend their answer, and as grounds therefore state as follows:

1. On the 31<sup>st</sup> day of October, 2006, Plaintiff, Ohio Casualty Insurance Company, filed its complaint for declaratory judgment to determine the rights and obligations of Ohio Casualty under a policy of insurance it issued to Defendants, Manifold Construction, LLC and Jack Manifold (hereinafter collectively referred to as "Manifold").
2. On the 25<sup>th</sup> day of July, 2007, Whittelsey filed their answer to Plaintiff's complaint. (Doc. #23).
3. On the 26<sup>th</sup> day of July, 2007, Manifold filed their answer the Plaintiff's complaint. (Doc. #25).
4. On the 11<sup>th</sup> day of October, 2007, a telephonic discovery conference was held before the Honorable Terry F. Moorer, United States Magistrate Judge, regarding discovery issues. Said hearing ended with the parties being directed to meet for a face-to-face discovery

conference and, if necessary, to meet with Judge Moorer after said face-to-face meeting on the 28<sup>th</sup> day of November, 2007, if discovery issues were still not resolved.

5. Pursuant to Section 4 of this Honorable Court's Uniform Scheduling Order (Doc. #29), any motions to amend any pleadings are due October 17, 2007.

6. Pursuant to Fed.R.Civ.P. 15, leave to amend "shall be freely given when justice so requires."

7. Due to Plaintiff's failure to produce documents pursuant to legitimate requests, Whittelsey has been unable to review documents that may give rise to additional defenses available to Whittelsey. However, the above stated deadline requires action on Whittelsey's part; therefore, out of an abundance of caution, Whittelsey seeks to amend their answer (Doc. #23) to add certain affirmative defenses and to adopt any and all affirmative defenses asserted by Manifold. Filed herewith as Exhibit A is Whittelsey's proposed amended answer.

8. The parties would not be prejudiced by allowing such an amendment.

WHEREFORE, Whittelsey prays this Honorable Court grant Whittelsey's motion to amend their answer as set forth in Exhibit A hereto.

Respectfully submitted this the 17<sup>th</sup> day of October, 2007.

WHITTELSEY, WHITTELSEY & POOLE, P.C.

/s/ Davis B. Whittelsey

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document on the parties listed below electronically or by placing a copy of the same in the United States mail, postage prepaid, to their correct address on this the 17<sup>th</sup> day of October, 2007.

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  )  
Defendants.                          )

**FIRST AMENDED ANSWER**

COME NOW the Defendants, Whittelsey Properties, Inc. and C.S. Whittelsey, IV (collectively referred to herein sometimes as “Whittelsey”), and amend their answer (Doc. #23) to add the following defenses, reserving the right to amend or supplement upon the discovery of additional facts, defenses and/or claims:

1. Whittelsey adopts by reference all defenses pled by Defendants, Manifold Construction, LLC and Jack Manifold, in their answer. (Doc. #25).
2. Whittelsey asserts the Plaintiff has breached the enhanced duty of good faith.
3. Whittelsey asserts the Plaintiff has violated duties owed by an insurance carrier as set forth in *L & S Roofing Supply Co. v. St. Paul Fire & Marine Insurance Co.*, 521 So.2d 1298 (Ala. 1987).
4. Whittelsey asserts the Plaintiff has lost the right to assert non-coverage under policy exclusions because it breached the duty of enhanced good faith owed to Defendants, Manifold Construction, LLC and Jack Manifold.

Respectfully submitted this the 17<sup>th</sup> day of October, 2007.

WHITTELSEY, WHITTELSEY & POOLE, P.C.

/s/ Davis B. Whittelsey

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